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AGAZARIAN
C.P.

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-190616

DATE: March 22, 1978

MATTER OF: Donald Mitgang - Real Estate Expenses -
Attorney's Fees

DIGEST: Employee purchased residence in Buffalo, New York, area incident to transfer and incurred cost of legal fees of both bank's (mortgagee's) attorney and his own attorney for performance of legal services in connection with transaction. Employee may be reimbursed for both sets of legal fees as under our decision in George W. Lay, 56 Comp. Gen. 561 (1977), except for costs of litigation, necessary and reasonable legal fees customary in locality of residence transaction may be reimbursed. Customary practice in Buffalo area is for purchaser to incur expenses of mortgagee's attorney and own attorney in connection with similar legal services performed in the interests of the respective parties. B-174964, September 21, 1972, is no longer to be followed.

This matter concerns the request for an advance decision by Mr. William H. Ethe, an authorized certifying officer of the Department of the Treasury, Internal Revenue Service (IRS) as to whether Mr. Donald Mitgang, an employee of the IRS may be allowed payment in the additional amount of \$450 for legal fees incurred in connection with the purchase of a residence incident to a permanent change of station.

The record shows that in February 1977, Mr. Mitgang was authorized relocation expenses incident to his transfer from Cleveland, Ohio, to Buffalo, New York. On June 14, 1977, Mr. Mitgang purchased a residence in the Buffalo area and in connection with this residence Mr. Mitgang has claimed reimbursement of legal fees in the total amount of \$900. The claim in the amount of \$900 represents attorney's fees of \$450 for legal services provided by attorneys of the Buffalo Savings Bank (mortgagee) in connection with Mr. Mitgang's receipt of a loan for the real estate purchase and also \$450 in fees for legal services provided by Mr. Mitgang's attorney incident to the real estate transaction.

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The certifying officer is concerned with allowing payment of the claim for reimbursement of two attorney's fees in view of our decision in B-174964, September 21, 1972. In that decision we determined that a transferred employee who purchased a residence at his new duty station and who had been reimbursed for the costs of legal services provided by the mortgagee's (bank's) attorneys was not also entitled to reimbursement of fees for the same legal services which were rendered by his own attorney. We held that the law and regulations did not contemplate allowance of legal fees which are duplicate in nature and thus not necessary to the acquisition of a good and valid title, even where it may be customary in the area for a purchaser to be represented by his own attorney.

As a result of concern about allowing reimbursement for two attorney's fees, where the fees may be for duplicate legal services, the IRS disallowed reimbursement of \$450 claimed for one set of attorney's fees and requested that Mr. Mitgang provide itemization of the attorney's fees claimed so that a determination could be made as to whether the legal services were duplicate in nature. In response to the agency's request for itemization of legal fees, Mr. Mitgang's attorney provided the following breakdown:

Purchaser's attorney

- 1) Review of contract of purchase;
- 2) Negotiate terms of contract;
- 3) Progress towards closing date;
- 4) Examine title for purchasers' interest;
- 5) Negotiate with sellers' attorney and examine sellers' sale figures;
- 6) Examine documents presented by seller to purchaser;
- 7) Represent purchaser at mortgage closing and at title closing;
- 8) Certify title to the purchaser.

Bank's attorney

- 1) Examination of legality of the loan;
- 2) Examination of title for bank purposes;
- 3) Preparation of mortgage closing documents;

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- 4) Representation of bank at mortgage closing;
- 5) Post closing review of transaction to certify completion of all title requirements;
- 6) Certification to bank of validity of mortgage lien.

In addition, Mr. Mitgang's attorneys have pointed out that while the bank's and the employee's attorneys may perform legal services of the same general character, for instance title examination, the services are performed from differing perspectives, in protection of differing interests.

The agency has asked whether its request for itemization of legal fees was proper, and if reimbursement for purely advisory services may be allowed. Lastly, the agency asks us whether payment may be allowed for two legal fees where the attorneys for the bank and the employee rendered the same type of legal services.

Our decision in B-174964, supra, was rendered prior to our decision in George W. Lay, B-185976, April 27, 1977, 56 Comp. Gen. 561, in which we reviewed the policy concerning the extent to which legal costs of a residence transaction may be reimbursed. In that decision, we held that, except for fees and costs of litigation, necessary and reasonable legal fees and costs, including those for services advisory in nature, which are incurred in connection with the sale or purchase of a residence may be reimbursed without itemization provided such costs are within the customary range of charges for such services within the locality of the transaction. The holding in 56 Comp. Gen. 561, supra, applies to residence transactions, including Mr. Mitgang's, in which settlement occurs on or after April 27, 1977. Under our decision in Lay, if legal services incident to a real estate transaction are customarily performed in the location of the residence transaction by the lending institution, a legal fee for an additional rendition of such services by another party may not be reimbursed since the additional legal services would be neither necessary nor reasonable in view of the prevailing local practice. If, on the other hand, it were the local custom for the purchaser to be represented by his own attorney, as well as to pay for legal services rendered by the mortgagee's attorney, legal expenses for services by both attorneys would properly be reimbursable. See James B. O'Brien, B-185548, July 19, 1977. Accordingly, B-174964, supra, is modified to the extent set forth above.

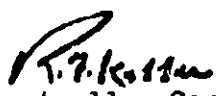
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We have been informally advised by the Buffalo, New York, area office of the United States Department of Housing and Urban Development (HUD) that in the Buffalo area it is customary for the purchaser of a residence to incur the fees for legal services rendered by the mortgagee's attorney as well as to retain his own attorney in connection with the same general types of legal services provided by the mortgagee's attorney. Furthermore, we have been advised by the HUD area office that the amount claimed for legal fees, \$900, or \$450 for the services provided for each attorney, is both reasonable and customary.

Thus, in view of the above, Mr. Mitgang is entitled to reimbursement for attorney's fees as claimed in the amount of \$900.

Concerning the agency's question as to the propriety of requesting an itemization of attorney's fees, we note that under our holding in Lay, a single overall fee charged for legal services may properly be paid without itemization if it is within the customary range of charges in that locality.

Accordingly, Mr. Mitgang's reclaim voucher in the amount of \$450 may be certified for payment.


Deputy Comptroller General
of the United States